

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Paul Turnovec,

Plaintiff,

vs.

Linda S. McMahon,
Commissioner of Social Security,

Defendant.

**ORDER ADOPTING
REPORT AND RECOMMENDATION**

Case No. 1:06-cv-083

The plaintiff, Paul Turnovec, filed this complaint on October 24, 2006, seeking judicial review of the Social Security Commissioner's determination that Turnovec's disability has ceased. Magistrate Judge Charles S. Miller, Jr. conducted a review of the record and relevant case law and issued a Report and Recommendation on August 7, 2007. Judge Miller recommended that the Defendant's motion for summary judgment be granted and that this matter be dismissed. Turnovec was then given ten (10) days to file an objection to the Report and Recommendation.

On August 21, 2007, Turnovec filed an objection to the Report and Recommendation (Docket No. 11). In the objection, Turnovec raised numerous arguments against the dismissal of the case, including that the Commissioner: 1) failed in his burden of proof to establish that Turnovec had a medical improvement; 2) failed to account for Turnovec's respiratory problems; 3) failed to account for Turnovec's absence from the work force for a period of time when assessing Turnovec's job skills; 4) failed to consider Turnovec's age; and 5) improperly relied on the non-treating physicians' opinions.

After a careful review of the Report and Recommendation and the objections filed by Turnovec, it is clear that the arguments enumerated above were previously raised and addressed in

the Report and Recommendation. The Court finds the Report and Recommendation persuasive with regard to those issues.

Turnovec also contends that the Report and Recommendation discounted several of the factors listed above and did not place the issues in the proper context. See Docket No. 11, p. 15. As set forth in the Report and Recommendation, it is well-settled that the scope of review of an administrative decision is more limited than that of de novo review. The Court must look at the record as a whole to determine whether the Commissioner's decision is supported by substantial evidence. The Court is required to affirm a Commissioner's decision that is supported by substantial evidence even if the Court would weigh the evidence differently. The Court finds that the Report and Recommendation carefully considered the entire record in concluding that there is substantial evidence to support the administrative decision.

Finally, Turnovec objects to a dismissal based on administrative activity regarding his eligibility for disability benefits that occurred after the filing of this case which administrative action was not made a part of the record prior to the issuance of the Report and Recommendation. It appears that Turnovec has now been awarded disability benefits from Social Security beginning in September 2006. See Docket No. 11-2. From the limited information provided to the Court, it appears that Turnovec followed the Administrative Law Judge's recommendation to file another application for disability insurance benefits, and that he was subsequently awarded disability benefits. See Docket No. 10, p. 14. Turnovec contends that the Commissioner's award of disability benefits after the termination of benefits in 2004, but prior to the commencement of this action in federal court, constitutes a reversal of the ALJ's decision and a waiver of the Commissioner's claim in this proceeding.

Because Turnovec's disability benefits were terminated on March 31, 2004, the focus of the administrative decision in this case was based on evidence of Turnovec's condition for the period between January 26, 2000, and March 31, 2004. A myriad of factors concerning Turnovec's eligibility for disability benefits could have changed since the time period under review in the administrative decision. The Court finds that Turnovec's subsequent award of disability benefits has no bearing on the Commissioner's or the ALJ's decision to uphold the termination of Turnovec's disability benefits on March 31, 2004.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the record as a whole and finds the Report and Recommendation to be persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 10) in its entirety. The Defendant's motion for summary judgment (Docket No. 6) is **GRANTED**, and Turnovec's claims are **DISMISSED**.

IT IS SO ORDERED.

Dated this 4th day of September, 2007.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court